

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

JOHN CERVANTES,	)	No. CV-F-05-0132 REC/WMW P
	)	
	)	ORDER DISMISSING ACTION AND
Plaintiff,	)	DIRECTING ENTRY OF JUDGMENT
	)	FOR DEFENDANT
vs.	)	
	)	
DERRAL ADAMS,	)	
	)	
	)	
Defendant.	)	
_____	)	

On May 17, 2005, the United States Magistrate Judge recommended that the court dismiss this action because of plaintiff's failure to timely comply with the Order filed on April 12, 2005 directing plaintiff to file an amended complaint stating a claim upon which relief can be granted.

On June 8, 2005, plaintiff timely filed objections to the recommendation.

The court has reviewed the record herein de novo.

In his objections, plaintiff does not provide any explanation for his failure to timely comply with the April 12,

1 2005 Order. Plaintiff essentially argues that the Magistrate  
2 Judge erred in concluding in the April 12, 2005 Order that  
3 plaintiff's complaint did not state a claim upon which relief can  
4 be granted and requests that the court "withdraw the report and  
5 grant plaintiff's complaint".

6 The court concurs with the April 12, 2005 Order that the  
7 complaint does not state a claim upon which relief can be  
8 granted. In addition, the court notes that Cal.Admin.Code 15 §  
9 3174, pertaining to restrictions on family visits, has been  
10 upheld in the face of an ex post facto challenge. See Allegrezza  
11 v. Gomez, 2000 WL 1888821 (9<sup>th</sup> Cir. 2000). Because plaintiff has  
12 not timely complied with the April 12, 2005 Order and presents  
13 nothing in his objections from which it may be inferred that  
14 plaintiff can state a claim upon which relief can be granted, the  
15 court dismisses this action for failure to state a claim.

16 ACCORDINGLY:

17 1. The Findings and Recommendation issued on May 17, 2005  
18 is adopted.

19 2. This action is dismissed for failure to state a claim  
20 upon which relief can be granted.

21 3. The Clerk of the Court is directed to enter judgment for  
22 defendant.

23 IT IS SO ORDERED.

24 **Dated: June 13, 2005**  
25 668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE